



**BEFORE THE ARIZONA CORPORATION**

**COMMISSIONERS**

**BOB STUMP, Chairman**  
**GARY PIERCE**  
**BRENDA BURNS**  
**BOB BURNS**  
**SUSAN BITTER SMITH**

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2014 JUL 8 PM 1 35

**ORIGINAL**

IN THE MATTER OF REORGANIZATION )  
OF UNS ENERGY CORPORATION )

DOCKET NO. E-04230A-14-0011

DOCKET NO. E-01933A-14-0011

Arizona Corporation Commission

**DOCKETED**

JUL 8 2014

) **JOINT POST-HEARING BRIEF OF**  
) **NOBLE AMERICAS ENERGY**  
) **SOLUTIONS LLC AND SOUTHERN**  
) **ARIZONA HOMEBUILDERS**  
) **ASSOCIATION**

DOCKETED BY

**I.**

**INTRODUCTION**

Pursuant to Administrative Law Judge Jane L. Rodda's oral directive to the parties at the conclusion of the evidentiary hearings in the above-captioned and above-docketed proceeding ("Instant Proceeding") on June 17, 2014, Noble Americas Energy Solutions LLC ("Noble Solutions") and the Southern Arizona Homebuilders Association ("SAHBA") hereby submit their Joint Post-Hearing Brief in the Instant Proceeding.

**II.**

**DISCUSSION**

**A. Noble Solutions' and SAHBA's Familiarity with Settlement Agreement**

Noble Solutions and SAHBA are very familiar with the May 16, 2014 Settlement Agreement and the related sixty-six (66) Settlement Conditions (collectively "Settlement Agreement"), which were filed with the Commission's Docket Control on May 16, 2014 and received into evidence as Exhibit JA-5 during the evidentiary hearing on June 16, 2014. In that regard, Noble Solutions witness, Greg Bass, and SAHBA's witness, David Godlewski, participated in the settlement discussions which occurred on May 5, 2014 at the Commission in Phoenix; and, each signed the Settlement Agreement on behalf of their respective organizations. In addition,

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1 both Mr. Bass and Mr. Godlewski submitted pre-settlement and post-settlement prepared Direct  
2 Testimony in the Instant Proceeding; and, such testimony was received into evidence as Exhibits  
3 Noble Solutions-1 and Noble Solutions-2 and Exhibits SAHBA-1 and SAHBA-2, respectively,  
4 during the evidentiary hearing on June 16, 2014.

5 **B. Noble Solutions' and SAHBA's General Reasons for Support of the Settlement**  
6 **Agreement.**

7 As indicated in their respective prepared Direct Testimony in support of the Settlement  
8 Agreement, Noble Solutions and SAHBA support the Settlement Agreement for a combination of  
9 reasons both (i) general in nature and (ii) specific to their respective circumstances and interests.  
10 From a general perspective, the Settlement Agreement reflects the results of good faith and spirited  
11 arms-length negotiations, with the balancing of a variety of interests among parties to the Instant  
12 Proceeding who participated in those negotiations; and, the settlement process was transparent and  
13 fully inclusive of all parties of record.<sup>1</sup> In that regard, Sections 1.7 and 5.1 of the Settlement  
14 Agreement respectively state:

15 "The terms of this Agreement are just, reasonable, fair, and in the public interest  
16 in that they provide a just and reasonable resolution of the issues arising from this  
17 Docket and, among other things, establish appropriate conditions to ensure quality  
18 of service by the Regulated Utilities, enhance the financial strength of UNS  
19 Energy and the Regulated Utilities, retain local control of the Regulated Utilities,  
20 improve access to capital for UNS Energy and the Regulated Utilities, and avoid  
21 unnecessary litigation expense and delay."

22 and

23 "This case has attracted a large number of participants with widely diverse  
24 interests. To achieve consensus for settlement, many participants are accepting  
25 positions that, in any other circumstances, they would be unwilling to accept.  
26 They are doing so because this Agreement, as a whole, is consistent with their  
27 long-term interests and with the broad public interest. The acceptance by any  
28 Signatory of a specific element of this Agreement shall not be considered as  
precedent for acceptance of that element in any other context."

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<sup>1</sup> Notably, not a single party has objected to the Settlement Agreement itself, including parties who did not participate in the settlement discussions. Rather, the City of Nogales' objection appears to be based upon (i) an asserted breach of UNS Electric's and UNS Gas' Franchise Agreements with the City of Nogales, by reason of a closing of that service which previously accepted customer cash payments, and (ii) the failure to date of UNS Energy, UNS Electric and UNS Gas to satisfactorily respond to the City of Nogales' concern. In that regard, Noble Solutions and SAHBA do not have a position on this issue. [See Tr. 81, l. 10-19 and Tr. 380, l. 18-20]

1 In addition, in their Post-Hearing Brief, UNS Energy Corporation (“UNS Energy”) and  
2 Fortis, Inc. (“Fortis”) have discussed why they believe that Commission approval of the Settlement  
3 Agreement as currently written would be consistent with both the “broad public interest” and the  
4 decision-making criteria set forth in A.A.C. R14-2-803(c). Noble Solutions and SAHBA share  
5 those general conclusions.<sup>2</sup> While a number of the provisions and conditions in the Settlement  
6 Agreement are not applicable to the specific circumstances and interests of Noble Solutions and  
7 SAHBA, they also are not inconsistent with the same.

8 **C. Noble Solutions’ and SAHBA’s Specific Reasons for Support of the Settlement**  
9 **Agreement.**

10 *1. Noble Solutions’ Specific Reasons*

11  
12 From the perspective of the specific interests of Noble Solutions, the Settlement Agreement  
13 and one (1) of the Settlement Conditions directly address a subject Mr. Bass discussed in his June  
14 2, 2014 prepared Direct Testimony in support of the Settlement Agreement. More specifically, in  
15 that testimony Mr. Bass referred to the previously filed January 24, 2014 prepared Direct  
16 Testimony of UNS Energy’s then Chief Executive Officer, Paul J. Bonavia, in which Mr. Bonavia  
17 discussed challenges and significant issues which confront UNS Energy and the Arizona Utilities  
18 in the near future.<sup>3</sup> Among the challenges Mr. Bonavia cited were (i) a need “to adapt to changes  
19 in customers’ energy consumption needs and expectations,” and (ii) a need “to offer customers a  
20 broader array of choices in price and quality of service.” Against that background, Mr. Bass and  
21 Noble Solutions suggested that a program similar to Arizona Public Service Company’s current  
22 Rate Schedule AG-1 program should be considered by UNS Energy and Fortis as a part of a broad-  
23 based approach for responding to the challenges mentioned by Mr. Bonavia.  
24

25  
26 <sup>2</sup> UNS Energy and Fortis circulated a draft of their Joint Post-Hearing Brief among the parties of record on July 7,  
27 2014, which Noble Solutions and SAHBA had an opportunity to review in advance of this Joint Post-Hearing Brief  
being finalized.

28 <sup>3</sup> Mr. Bonavia’s prepared Direct Testimony was admitted into evidence as Exhibit JA-6 during the June 16, 2014  
evidentiary hearing.

1 As a result of the subsequent settlement negotiations on May 5, 2014, the Settlement  
2 Agreement contains Settlement Condition No. 31, which provides as follows:

3 "In their next rate cases, TEP and UNSE will propose a pilot program for a 'buy  
4 through' tariff available to large light and power and large power service  
customers, respectively."

5 Noble Solutions is appreciative of this positive response by the settling parties, including UNS  
6 Energy and Fortis. Noble Solutions intends to intervene in TEP's and UNSE's respective next rate  
7 cases; and, it looks forward to the opportunity to review and comment upon such "buy through"  
8 pilot program(s) as TEP and UNS Electric will be proposing. In that regard, during the June 17,  
9 2014 evidentiary hearing, UNS Energy's Chief Executive Officer and President, David Hutchens,  
10 indicated that it is currently estimated that UNS Electric's next rate case will be filed in 2015,  
11 using a 2014 test period, and TEP's next rate case will be filed in 2017, using a 2016 test period.<sup>4</sup>

12 Noble Solutions believes that the willingness of UNS Energy and Fortis to affirmatively  
13 commit TEP and UNSE to proposing "buy through" programs in their respective next rate cases is  
14 consistent with that "broad public interest" which the Commission will consider in this proceeding,  
15 incident to determining if the proposed merger should be approved. Further, Noble Solutions  
16 believes that such commitment is also consistent with the testimony of Mr. Hutchens and Fortis'  
17 policy witness Barry Perry to the effect that the Joint Applicants' intend "to continue to work  
18 constructively with a variety of stakeholders," including Noble Solutions.<sup>5</sup> In fact, each of them  
19 confirmed that Settlement Condition No. 31 was illustrative of such an intent.<sup>6</sup> In addition, in  
20 response to questions from Judge Rodda, Mr. Hutchens testified that TEP and UNS Electric would  
21 each exert their respective "best efforts to design an appropriate tariff" to implement Settlement  
22 Condition No. 31.<sup>7</sup>

23 In addition, Settlement Condition No. 41(iii) speaks in terms of UNS Energy and its  
24 affiliates continuing to support and, where appropriate, enhance "economic partnerships" and  
25

26 <sup>4</sup> See Tr. 279, l. 10-11 and Tr. 279, l. 12-16, respectively.

27 <sup>5</sup> In that regard, see Exhibit JA-13 at page 12, l. 3-5; Tr. 280, l. 5-15; and Tr. 120, l. 8-24.

28 <sup>6</sup> See Tr. 280, l. 5-15 and Tr. 120, l. 8-24.

<sup>7</sup> See Tr. 338, l. 7-9.

1 “consumer partnerships.” As Judge Rodda observed in her March 10, 2014 Procedural Order  
2 granting Noble Solutions’ request for intervention in the Instant Proceeding, Noble Solutions could  
3 be either

4 “. . . a potential competitor or business partner with the Arizona Utilities.”  
5 [emphasis added]

6 In this instance, with a properly structured and inclusive “buy through” program or programs,  
7 Noble Solutions believes that the potential for it to “partner” with TEP and UNSE in the future in  
8 serving some of the requirements of some of those companies’ customers for safe, reasonable and  
9 adequate service is quite good.

10 2. SAHBA’s Specific Reasons

11  
12 From the perspective of the specific interests of SAHBA and its members, the Settlement  
13 Agreement and several of the Settlement Conditions satisfactorily address certain interests and  
14 concerns that Mr. Godlewski discussed in his June 2, 2014 prepared Direct Testimony in support  
15 of the Settlement Agreement.

16 One area of interest for SAHBA and its members pertained to TEP’s current line extension  
17 policies. As Mr. Godlewski indicated in his prepared Direct Testimony, a material change in those  
18 policies conceivably could have a detrimental economic impact upon the developer and  
19 homebuilder industries in TEP’s service area, as well as those other businesses and employers  
20 whose economic well-being is dependent upon or influenced by those two industries. Settlement  
21 Condition No. 32 is a recognition of and makes specific provision for this interest of SAHBA and  
22 its members, and states as follows:

23 “TEP will not propose any material modifications to its existing Line Extension  
24 tariff in its next rate case and TEP will abide by the Line Extension tariff as  
25 approved by, or may be approved by, the Commission.”

26 From SAHBA’s perspective, this language provides in effect that SAHBA and its members  
27 will have (i) advance notice of any material change in its current line extension policies which TEP  
28 might wish to propose at some future date, after its next rate case, and (ii) an opportunity to

1 express such position as SAHBA might have with respect to such proposed material change in a  
2 formal proceeding before the Commission before such a change could become effective. In that  
3 regard, given the historic collaborative relationship with has existed between TEP and SAHBA  
4 and its members, SAHBA anticipates that TEP will engage in a constructive dialogue with  
5 SAHBA before reaching a decision as to whether or not to propose a material change; and, during  
6 the June 17, 2014 evidentiary hearing, Mr. Hutchens testified that such advance discussion with  
7 SAHBA is in fact what TEP intends, should TEP have occasion at some future date to consider  
8 possibly proposing a change.<sup>8</sup>

9 A second area of interest to SAHBA and its members related to the future size and  
10 composition of the Board(s) of Directors of TEP and UNS Electric. As indicated in Mr.  
11 Godlewski's April 30, 2014 pre-settlement prepared Direct Testimony, SAHBA and its members  
12 believe that the size and composition of future Board(s) of Directors of those two (2) entities  
13 should be such as to (i) allow for a diverse mixture of background and experience among the  
14 Board members as a whole, and (ii) provide that Board members will be personally familiar with  
15 the business conditions and relationships of the service area in question, with a preponderance of  
16 such members residing in the service areas of those utilities. In that regard, Settlement Condition  
17 No. 37 provides as follows:

18 "Fortis shall have appointed the Board of Directors of UNS Energy which shall  
19 have oversight over UNS Energy and the Regulated Utilities no later than one  
20 year after the closing. A majority of the directors of UNS Energy shall have and  
21 shall have had permanent residence in Arizona for at least 3 years prior to  
22 appointment. A majority of directors of UNS Energy shall be independent."

23 Based upon information acquired from representatives of Fortis and UNS Energy during  
24 the settlement negotiations as to how Fortis intends to determine the size and composition,  
25 including Arizona residency, of future Board(s) of Directors of UNS Energy and the Arizona  
26 Utilities, given Fortis' future role as the sole shareholder of UNS Energy, SAHBA and its  
27 members believe that Settlement Condition No. 37 satisfactorily addresses the subject of Board of

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28 <sup>8</sup> See Tr. 338, l. 10-23.

1 Director size and composition. Moreover, it is another example of the stated intent of the Joint  
2 Applicants to "continue to work constructively with various stakeholders."<sup>9</sup>

3 A third area of interest to SAHBA and its members was continuation of the ongoing  
4 positive and collaborative relationship which has existed for a number of years between TEP and  
5 SAHBA and its membership. Based upon statements made by Fortis and UNS Energy's  
6 representatives during the settlement negotiations, and given the aforementioned responsiveness of  
7 Settlement Condition Nos. 32 and 37 to other areas of interest to SAHBA and its members,  
8 SAHBA believes that Fortis and UNS Energy intend to both continue and build upon that historic  
9 relationship. Illustrative of that intent is the language of Settlement Condition No. 41(iii), which  
10 provides that UNS Energy and its subsidiaries "shall continue to support, and where appropriate,  
11 enhance (a) existing . . . economic . . . partnerships and (c) consumer partnerships." Further  
12 illustrative is the testimony of Messrs. Hutchens and Perry as to the Joint Applicants' intent to  
13 "continue to work constructively with various stakeholders,"<sup>10</sup> including SAHBA.

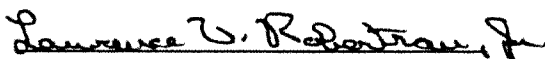
### 14 III.

### 15 CONCLUSION

16 For both the general and specific reasons discussed in Section II above, Noble Solutions  
17 and SAHBA believe that the Commission should enter an order or other appropriate form of  
18 decision approving the Settlement Agreement as currently written and the merger which it  
19 contemplates.

20 Dated this 8<sup>th</sup> day of July 2014.

21  
22 Respectfully submitted,

23 

24 Lawrence V. Robertson, Jr.

25 Of Counsel to Munger Chadwick, P.L.C.

26 Attorney for Noble Americas Energy Solutions LLC  
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27 <sup>9</sup> See Tr. 280, l. 16-20 and Tr. 120, l. 25 – Tr. 121, l. 7.

28 <sup>10</sup> See, for example, transcript citations set forth in Footnote 4. Also, see Tr. 280, l. 21-25 and Tr. 121, l. 8-16.

1 The original and thirteen (13) copies  
2 of the foregoing will be filed  
3 the 8<sup>th</sup> day of July 2014 with:

4 Docket Control Division  
5 Arizona Corporation Commission  
6 1200 West Washington Street  
7 Phoenix, Arizona 85007

8 A copy of the same served by e-mail  
9 or first class mail that same date to:

10 Lyn A. Farmer, Chief Administrative Law Judge  
11 Hearing Division  
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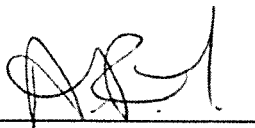
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